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HOUSE BILL 153

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Elizabeth "Liz" Thomson and Deborah A. Armstrong
and Elizabeth "Liz" Stefanics

AN ACT

RELATING TO HEALTH COVERAGE; ENACTING SECTIONS OF THE HEALTH CARE PURCHASING ACT, THE NEW MEXICO INSURANCE CODE, THE HEALTH MAINTENANCE ORGANIZATION LAW AND THE NONPROFIT HEALTH CARE PLAN LAW TO PROVIDE ENROLLEES WITH PARITY OF ACCESS AND PAYMENT BETWEEN PARTICIPATING MAIL-ORDER PHARMACIES AND PARTICIPATING COMMUNITY PHARMACIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Health Care Purchasing Act is enacted to read:

"~~[NEW MATERIAL]~~ PHARMACY BENEFITS--PARTICIPATING PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act, that offers a prescription drug or device

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1 benefit shall permit:

2 (1) any pharmacy or pharmacist licensed in the
3 state to participate as a participating community pharmacy or
4 participating mail-order pharmacy if that pharmacy agrees to
5 accept the terms and conditions the group health coverage
6 establishes; and

7 (2) an enrollee to fill a covered prescription
8 at the enrollee's option at any participating community
9 pharmacy or participating mail-order pharmacy; provided that
10 the participating community pharmacy accepts reimbursement at a
11 rate comparable to that of a participating mail-order pharmacy.

12 B. A group health plan shall not impose a
13 copayment, coinsurance or other condition on an enrollee who
14 elects to fill a covered prescription from any participating
15 community pharmacy that is not also imposed on an enrollee who
16 elects to fill a covered prescription at a participating mail-
17 order pharmacy or at any other community pharmacy.

18 C. A group health plan shall not require an
19 enrollee, as a condition of payment or reimbursement, to
20 purchase pharmacy services, including prescription drugs,
21 exclusively through a mail-order pharmacy.

22 D. Any provision in a group health plan, including
23 any form of self-insurance, offered, issued or renewed under
24 the Health Care Purchasing Act, that is contrary to any
25 provision of this section is void to the extent of that

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1 conflict.

2 E. As used in this section:

3 (1) "covered prescription" means a drug or
4 device for which a group health plan has agreed to make
5 reimbursement under the terms of the group health plan;

6 (2) "participating community pharmacy" means a
7 retail pharmacy:

8 (a) for which a majority of the
9 pharmacy's business in the state is not conducted as a mail-
10 order pharmacy; and

11 (b) that has agreed to accept a group
12 health plan's contracted payment rate, and, pursuant to this
13 agreement, an enrollee may fill a prescription and pay a
14 copayment or coinsurance that is more advantageous to the
15 enrollee than the copayment or coinsurance for a prescription
16 sought from a retail pharmacy that has not agreed to the group
17 health plan's contracted payment rate; and

18 (3) "participating mail-order pharmacy" means
19 a retail pharmacy:

20 (a) located in the United States;

21 (b) for which the majority of the
22 pharmacy's business consists of dispensing a prescription drug
23 or device under a prescription drug order and having the drug
24 or device delivered to a patient by the United States mail, a
25 common carrier or a delivery service. Mail-order pharmacies

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1 include pharmacies that do business via the internet or other
2 electronic media; and

3 (c) that has agreed to accept a group
4 health plan's contracted payment rate, and, pursuant to this
5 agreement, an enrollee may fill a prescription and pay a
6 copayment or coinsurance that is more advantageous to the
7 enrollee than the copayment or coinsurance for a prescription
8 sought from a retail pharmacy that has not agreed to the group
9 health plan's contracted payment rate."

10 SECTION 2. A new section of Chapter 59A, Article 22 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
13 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

14 A. An individual health insurance policy, health
15 care plan or certificate of health insurance that is delivered,
16 issued for delivery or renewed in this state and that provides
17 a prescription drug or device benefit shall permit:

18 (1) any pharmacy or pharmacist licensed in the
19 state to participate as a participating community pharmacy or
20 participating mail-order pharmacy if that pharmacy agrees to
21 accept the terms and conditions the health insurance policy,
22 health care plan or certificate of insurance establishes; and

23 (2) an insured to fill a covered prescription
24 at the insured's option at any participating community pharmacy
25 or participating mail-order pharmacy; provided that the

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1 participating community pharmacy accepts reimbursement at a
2 rate comparable to that of a participating mail-order pharmacy.

3 B. An insurer shall not impose a copayment,
4 coinsurance or other condition on an insured who elects to fill
5 a covered prescription from any participating community
6 pharmacy that is not also imposed on an insured who elects to
7 fill a covered prescription at any participating mail-order
8 pharmacy.

9 C. An insurer shall not require an insured, as a
10 condition of payment or reimbursement, to purchase pharmacy
11 services, including prescription drugs, exclusively through a
12 mail-order pharmacy.

13 D. A health insurance policy, health care plan or
14 certificate of insurance that is delivered, issued for delivery
15 or renewed in this state and that contains a provision contrary
16 to any provision of this section is void to the extent of that
17 conflict.

18 E. As used in this section:

19 (1) "covered prescription" means a drug or
20 device for which a group health plan has agreed to make
21 reimbursement under the terms of the policy, plan or
22 certificate;

23 (2) "participating community pharmacy" means a
24 retail pharmacy:

25 (a) for which a majority of the

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1 pharmacy's business in the state is not conducted as a mail-
2 order pharmacy; and

3 (b) that has agreed to accept an
4 insurer's contracted payment rate, and, pursuant to this
5 agreement, an insured may fill a prescription and pay a
6 copayment or coinsurance that is more advantageous to the
7 insured than the copayment or coinsurance for a prescription
8 sought from a retail pharmacy that has not agreed to the
9 insurer's contracted payment rate; and

10 (3) "participating mail-order pharmacy" means
11 a retail pharmacy:

12 (a) located in the United States;

13 (b) for which the majority of the
14 pharmacy's business consists of dispensing a prescription drug
15 or device under a prescription drug order and having the drug
16 or device delivered to a patient by the United States mail, a
17 common carrier or a delivery service. Mail-order pharmacies
18 include pharmacies that do business via the internet or other
19 electronic media; and

20 (c) that has agreed to accept an
21 insurer's contracted payment rate, and, pursuant to this
22 agreement, an insured may fill a prescription and pay a
23 copayment or coinsurance that is more advantageous to the
24 insured than the copayment or coinsurance for a prescription
25 sought from a retail pharmacy that has not agreed to the

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1 insurer's contracted payment rate."

2 SECTION 3. A new section of Chapter 59A, Article 23 NMSA
3 1978 is enacted to read:

4 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
5 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

6 A. A group or blanket health insurance policy,
7 health care plan or certificate of health insurance that is
8 delivered, issued for delivery or renewed in this state and
9 that provides a prescription drug or device benefit shall
10 permit:

11 (1) any pharmacy or pharmacist licensed in the
12 state to participate as a participating community pharmacy or
13 participating mail-order pharmacy if that pharmacy agrees to
14 accept the terms and conditions the health insurance policy,
15 health care plan or certificate of insurance establishes; and

16 (2) an insured to fill a covered prescription
17 at the insured's option at any participating community pharmacy
18 or participating mail-order pharmacy; provided that the
19 participating community pharmacy accepts reimbursement at a
20 rate comparable to that of a participating mail-order pharmacy.

21 B. An insurer shall not impose a copayment,
22 coinsurance or other condition on an insured who elects to fill
23 a covered prescription from any participating community
24 pharmacy that is not also imposed on an insured who elects to
25 fill a covered prescription at any participating mail-order

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1 pharmacy.

2 C. An insurer shall not require an insured, as a
3 condition of payment or reimbursement, to purchase pharmacy
4 services, including prescription drugs, exclusively through a
5 mail-order pharmacy.

6 D. A health insurance policy, health care plan or
7 certificate of insurance that is delivered, issued for delivery
8 or renewed in this state and that contains a provision contrary
9 to any provision of this section is void to the extent of that
10 conflict.

11 E. As used in this section:

12 (1) "covered prescription" means a drug or
13 device for which a group health plan has agreed to make
14 reimbursement under the terms of the group health plan;

15 (2) "participating community pharmacy" means a
16 retail pharmacy:

17 (a) for which a majority of the
18 pharmacy's business in the state is not conducted as a mail-
19 order pharmacy; and

20 (b) that has agreed to accept an
21 insurer's contracted payment rate, and, pursuant to this
22 agreement, an insured may fill a prescription and pay a
23 copayment or coinsurance that is more advantageous to the
24 insured than the copayment or coinsurance for a prescription
25 sought from a retail pharmacy that has not agreed to the

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1 insurer's contracted payment rate; and

2 (3) "participating mail-order pharmacy" means
3 a retail pharmacy:

4 (a) located in the United States;

5 (b) for which the majority of the
6 pharmacy's business consists of dispensing a prescription drug
7 or device under a prescription drug order and having the drug
8 or device delivered to a patient by the United States mail, a
9 common carrier or a delivery service. Mail-order pharmacies
10 include pharmacies that do business via the internet or other
11 electronic media; and

12 (c) that has agreed to accept an
13 insurer's contracted payment rate, and, pursuant to this
14 agreement, an insured may fill a prescription and pay a
15 copayment or coinsurance that is more advantageous to the
16 insured than the copayment or coinsurance for a prescription
17 sought from a retail pharmacy that has not agreed to the
18 insurer's contracted payment rate."

19 SECTION 4. A new section of the Health Maintenance
20 Organization Law is enacted to read:

21 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
22 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

23 A. An individual or group health maintenance
24 organization contract that is delivered, issued for delivery or
25 renewed in this state and that provides a prescription drug or

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1 device benefit shall permit:

2 (1) any pharmacy or pharmacist licensed in the
3 state to participate as a participating community pharmacy or
4 participating mail-order pharmacy if that pharmacy agrees to
5 accept the terms and conditions the health maintenance contract
6 establishes; and

7 (2) an enrollee to fill a covered prescription
8 at the enrollee's option at any participating community
9 pharmacy or participating mail-order pharmacy; provided that
10 the participating community pharmacy accepts reimbursement at a
11 rate comparable to that of a participating mail-order pharmacy.

12 B. A health maintenance organization shall not
13 impose a copayment, coinsurance or other condition on an
14 enrollee who elects to fill a covered prescription from any
15 participating community pharmacy that is not also imposed on an
16 enrollee who elects to fill a covered prescription at a
17 participating mail-order pharmacy.

18 C. An insurer shall not require an enrollee, as a
19 condition of payment or reimbursement, to purchase pharmacy
20 services, including prescription drugs, exclusively through a
21 mail-order pharmacy.

22 D. A health insurance policy, health care plan or
23 certificate of insurance that is delivered, issued for delivery
24 or renewed in this state and that contains a provision contrary
25 to any provision of this section is void to the extent of that

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1 conflict.

2 E. As used in this section:

3 (1) "covered prescription" means a drug or
4 device for which a group health plan has agreed to make
5 reimbursement under the terms of the group health plan;

6 (2) "participating community pharmacy" means a
7 retail pharmacy:

8 (a) for which a majority of the
9 pharmacy's business in the state is not conducted as a mail-
10 order pharmacy; and

11 (b) that has agreed to accept a health
12 maintenance organization's contracted payment rate, and,
13 pursuant to this agreement, an enrollee may fill a prescription
14 and pay a copayment or coinsurance that is more advantageous to
15 the enrollee than the copayment or coinsurance for a
16 prescription sought from a retail pharmacy that has not agreed
17 to the health maintenance organization's contracted payment
18 rate; and

19 (3) "participating mail-order pharmacy" means
20 a retail pharmacy:

21 (a) located in the United States;

22 (b) for which the majority of the
23 pharmacy's business consists of dispensing a prescription drug
24 or device under a prescription drug order and having the drug
25 or device delivered to a patient by the United States mail, a

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1 common carrier or a delivery service. Mail-order pharmacies
2 include pharmacies that do business via the internet or other
3 electronic media; and

4 (c) that has agreed to accept a health
5 maintenance organization's contracted payment rate, and,
6 pursuant to this agreement, an enrollee may fill a prescription
7 and pay a copayment or coinsurance that is more advantageous to
8 the enrollee than the copayment or coinsurance for a
9 prescription sought from a retail pharmacy that has not agreed
10 to the health maintenance organization's contracted payment
11 rate."

12 SECTION 5. A new section of the Nonprofit Health Care
13 Plan Law is enacted to read:

14 "[NEW MATERIAL] PHARMACY BENEFITS--PARTICIPATING
15 PHARMACIES--ACCESS PARITY--COPAYMENT AND COINSURANCE PARITY.--

16 A. An individual or group health care plan that is
17 delivered, issued for delivery or renewed in this state and
18 that provides a prescription drug or device benefit shall
19 permit:

20 (1) any pharmacy or pharmacist licensed in the
21 state to participate as a participating community pharmacy or
22 participating mail-order pharmacy if that pharmacy agrees to
23 accept the terms and conditions the health maintenance contract
24 establishes; and

25 (2) a subscriber to fill a covered

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1 prescription at the subscriber's option at any participating
2 community pharmacy or participating mail-order pharmacy;
3 provided that the participating community pharmacy accepts
4 reimbursement at a rate comparable to that of a participating
5 mail-order pharmacy.

6 B. A health care plan shall not impose a copayment,
7 coinsurance or other condition on a subscriber who elects to
8 fill a covered prescription from any participating community
9 pharmacy that is not also imposed on a subscriber who elects to
10 fill a covered prescription at a participating mail-order
11 pharmacy.

12 C. A health maintenance organization shall not
13 require a subscriber, as a condition of payment or
14 reimbursement, to purchase pharmacy services, including
15 prescription drugs, exclusively through a mail-order pharmacy.

16 D. A health maintenance organization contract that
17 contains a provision contrary to any provision of this section
18 is void to the extent of that conflict.

19 E. As used in this section:

20 (1) "covered prescription" means a drug or
21 device for which a group health plan has agreed to make
22 reimbursement under the terms of the group health plan;

23 (2) "participating community pharmacy" means a
24 retail pharmacy:

25 (a) for which a majority of the

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1 pharmacy's business in the state is not conducted as a mail-
2 order pharmacy; and

3 (b) that has agreed to accept a health
4 care plan's contracted payment rate, and, pursuant to this
5 agreement, a subscriber may fill a prescription and pay a
6 copayment or coinsurance that is more advantageous to the
7 subscriber than the copayment or coinsurance for a prescription
8 sought from a retail pharmacy that has not agreed to the health
9 care plan's contracted payment rate; and

10 (3) "participating mail-order pharmacy" means
11 a retail pharmacy:

12 (a) located in the United States;

13 (b) for which the majority of the
14 pharmacy's business consists of dispensing a prescription drug
15 or device under a prescription drug order and having the drug
16 or device delivered to a subscriber by the United States mail,
17 a common carrier or a delivery service. Mail-order pharmacies
18 include pharmacies that do business via the internet or other
19 electronic media; and

20 (c) that has agreed to accept a health
21 care plan's contracted payment rate, and, pursuant to this
22 agreement, a subscriber may fill a prescription and pay a
23 copayment or coinsurance that is more advantageous to the
24 subscriber than the copayment or coinsurance for a prescription
25 sought from a retail pharmacy that has not agreed to the health

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